



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2017-0584; FRL-9970-73-OW]

State of Idaho Voluntary Transfer of Primacy of the Class II Underground Injection Control Program to the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the transfer of the state of Idaho's Underground Injection Control (UIC) program for Class II injection wells from Idaho to EPA, and is concurrently issuing a proposed rule to amend EPA's UIC regulations to reflect such transfer. This transfer would be effective upon publication in the Federal Register of a final rule revising such regulations. Idaho submitted a formal request that EPA transfer and directly implement the Class II UIC Program. Idaho would maintain primacy for Class I, III, IV, and V injection wells pursuant to their EPA-approved program in 1985.

DATES: Comments must be received on or before **[Insert date 45 days after publication in the Federal Register]**. A public hearing will be held only if there is significant public interest. Request for a public hearing will be accepted until **[Insert date 15 days after publication in the Federal Register]**. Only if requested, a public hearing will be held on January 8, 2018, from 2 p.m. to 5 p.m., at the Banner Bank Building, 950 W. Bannock Street, Boise, Idaho. Requests for a public hearing may be mailed to: Evan Osborne, U.S. Environmental Protection Agency, Region 10, 1200 6th Ave., OCE-101, Seattle, Washington 98101. For additional information

regarding the public hearing, please contact Evan Osborne (206) 553-1747 or
osborne.evan@epa.gov.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OW-2017-0584**, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system).

For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Colin Dyroff, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-3149; fax number: (202) 564-3754; email address: dyroff.colin@epa.gov; or Evan Osborne, U.S. Environmental Protection Agency, Region 10, 1200 6th Ave., OCE-101, Seattle, Washington 98101; telephone number: (206) 553-1747; fax number: (206) 553-1762; email address: osborne.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Taking this Action?

On August 25, 2017, EPA received a letter from the Idaho Department of Water Resources (IDWR), formally requesting that EPA transfer and directly implement the Class II UIC program in Idaho, pursuant to 40 CFR 145.34(a). Class II injection wells inject fluids (1) that are brought to the surface in connection with natural gas storage, or oil or natural gas production; or (2) for the purpose of enhanced oil or natural gas recovery; or (3) for the storage of hydrocarbons, which are liquid at standard temperature and pressure. Idaho received primary implementation and enforcement authority (primacy) for Class I, II, III, IV, and V injection wells under the Safe Drinking Water Act, section 1422, on July 22, 1985. Idaho has since maintained primacy for these injection well classes in Idaho, including Class II.

Class II injection wells were banned in Idaho under the state's regulations in 1985, when EPA originally approved Idaho primacy, and as a result, this ban was codified in EPA's regulations. However, in 2013, the state passed legislation which allows these wells. Although the state's regulations now allow Class II wells, Idaho has not issued any Class II permits because EPA has not approved the change to Idaho's approved Class II UIC program and the wells remain banned under federal law; therefore, the state is not authorized to issue Class II permits. The voluntary transfer of authority for the UIC Class II program to EPA would allow EPA to issue Class II permits in Idaho. EPA would be responsible for the direct implementation of the Class II underground injection program in Idaho, including permitting, compliance, and enforcement responsibilities, pursuant to the SDWA and federal UIC regulations.

This Federal Register document constitutes public notice of the transfer of Idaho's Class

II program to EPA, as required by 40 CFR 145.34(a)(3). In this Federal Register document, EPA also proposes to make conforming changes to its regulations to reflect such transfer. 40 CFR part 147 sets forth the applicable UIC programs for each of the states. This rule would update 40 CFR part 147, Subpart N, which currently lists Idaho as having primacy over Class II, to indicate that EPA will directly implement the Class II UIC program in Idaho. This transfer of authority will be effective upon publication of the final rule, revising such regulations, in the Federal Register. Because the transfer and rulemaking will allow wells to be permitted that were previously banned, EPA finds that there is “good cause” to make this rule, when final, effective upon publication in the Federal Register. 5 U.S.C. 553(d)(1) and (3).

II. Legal Authorities

A state with an approved primacy program may voluntarily transfer UIC program responsibilities to EPA, pursuant to 40 CFR 145.34(a). The regulations require that EPA provide notice of such transfer in the Federal Register at least 30 days before the transfer is to occur. 40 CFR 145.34(a)(3). The regulations do not provide for opportunity to comment on whether to transfer, and accordingly, EPA is not taking comment on such transfer.

EPA’s regulations at 40 CFR part 147 set forth the applicable UIC programs for each of the states. This rule would make ministerial revisions to these regulations to reflect the transfer noticed herein. Specifically, the rule would revise 40 CFR part 147, Subpart N, to indicate that the Class II UIC program for Idaho is to be directly implemented by EPA, and consists of the UIC program requirements of 40 CFR parts 124, 144, 146, and 148. EPA is taking comment only on these revisions.

III. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. *Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042.

D. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements on small entities; this action withdraws a state program and therein transfers direct implementation of the Class II UIC program to EPA. We have therefore concluded that this action will have no net regulatory burden for any directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This rule does not impose any mandates on small entities; this action withdraws a state program and therein transfers direct implementation of the Class II UIC program to EPA.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action contains no federal mandates for state and local governments and does not impose any enforceable duties on state and local governments. This action merely withdraws a state program (at the voluntary request from Idaho) and therein transfers implementation of the Class II UIC program to EPA.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it transfers a state program.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This rule does not impose any health or safety standards; this action transfers a state program and therein transfers direct implementation of the Class II UIC program to EPA.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian-lands, Intergovernmental relations, Reporting and record-keeping requirements, Water supply.

Dated: November 6, 2017.

E. Scott Pruitt,
Administrator.

For the reasons set out in the preamble, Title 40 chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 147 – STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

Subpart N—IDAHO

2. Amend §147.650 by revising the section heading and the introductory paragraph to read as follows:

§147.650 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the state of Idaho, other than those on Indian lands, is the program administered by the Idaho Department of Water Resources, approved by EPA pursuant to section 1422 of the Safe Drinking Water Act. Notice of this approval was published in the Federal Register on June 7, 1985; the effective date of this program is July 22, 1985. This program consists of the following elements, as submitted to EPA in Idaho's program application. Note: because EPA subsequently transferred the Class II UIC program from the Idaho Department of Water Resources to EPA, references to Class II in the following elements are no longer relevant or applicable for federal UIC purposes.

3. Amend §147.651 by revising the section heading and paragraphs (a) and (b) to read as

follows:

§147.651 EPA-administered program—Class II wells and all wells on Indian lands.

(a) *Contents.* EPA administers the UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the state of Idaho. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Idaho is June 11, 1984. The effective date of the UIC program for Class II wells on non-Indian lands in Idaho is [date of publication of final rule in the Federal Register].

[FR Doc. 2017-24637 Filed: 11/24/2017 8:45 am; Publication Date: 11/27/2017]